

After conducting a preliminary hearing on June 27, 2000, Judge Fuller found that claimant had provided timely notice of the accidental injury and, therefore, granted claimant's request for preliminary hearing benefits. Respondent and its insurance carrier filed this appeal contending that notice was not timely. That is the only issue on this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds:

1. The preliminary hearing Order should be affirmed.
2. The Appeals Board affirms the Judge's finding that claimant gave respondent timely notice of the August 25, 1999 accidental injury. Claimant testified that she told her supervisor on August 25, 1999, that her arm was hurting from lifting pots and pans. Claimant testified, in part:¹

A. (Claimant) . . . I maintained until the end of the day, . . . I always go in and sit and talk to her [claimant's supervisor], and I went in, and she was sitting at her desk, and I told her.

Q. (Mr. Gurney) That's Mrs. Curry?

A. Mrs. Judy Curry, that my arm was hurting. She looked at me and she said "Why?" I said, "From lifting those pots and pants [sic]."

. . .

A. And she didn't say anything. It was like she nodded her head like, you know. She didn't say anything, though.

Q. Did you talk to her about going to a physician or a doctor?

A. As I kept going, you know, the workers was helping me, you know, as I go on, but then I was constantly telling her that my arm was hurting.

. . .

A. The next day, yes, I was taking Tylenol, Advil, using Icy Hot and everything on there, and then we took on 80 to 90 more residents with the senior citizens, and that's what made it really get bad, and I told her, and she insisted, "Mary, you need to go to the doctor, maybe you need to go to the doctor."

Ms. Curry does not recall that conversation occurred. But Ms. Curry acknowledges that she suggested claimant see a physician as she believed claimant's complaints were

¹ Transcript of Preliminary Hearing, June 27, 2000; pp. 9, 10.

from injuries that claimant sustained while working for a previous employer over some 10 or 11 years ago.

3. The information that claimant provided her supervisor on August 25, 1999, was sufficient to place respondent on notice that claimant's complaints were related to her work and that claimant may have either injured herself or aggravated a preexisting condition. That information and notice is also sufficient for the alleged series of accidents. Therefore, the Appeals Board concludes that claimant provided timely notice of the accidental injury as required by the Workers Compensation Act.²

WHEREFORE, the Appeals Board affirms the June 29, 2000 preliminary hearing Order entered by Judge Fuller.

IT IS SO ORDERED.

Dated this ____ day of August 2000.

BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS
William L. Townsley, III, Wichita, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director

² K.S.A. 44-520.